

CYBER SECURITY FOR PROFESSIONAL SERVICE FIRMS

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Today's Topics

- What Are My Clients' Privacy Risks?
- How Does a D&O Policy Respond?
- Basics of Cyber Insurance
- How Does a Crime Policy Respond?
- Helping My Clients Use Insurance to Address the Business Risk of Cyber Incidents and Cyber Regulations
- Missteps to Avoid as a CPA that could Hinder Insurance Proceeds



Privacy Litigation as a Business Risk

- Breach-based Litigation from Consumers
 - Standing Questions – Clapper, Zappos, Neiman Marcus, Sony
- Breach-based Litigation from Shareholders
 - Target
 - Wyndham Hotels
 - Equifax
- Privacy Regulation-based Litigation
 - Facebook Lawsuit
 - Nielson Holdings Lawsuit
 - Both lawsuits raise operational concerns, not repercussions of a breach or a regulatory failure



Regulatory Risk

- GDPR
 - This new regulation went into effect in May 2018. Companies with any exposure to the EU—e.g. legal entity in Europe; legal representative there; offer goods or services to European citizens; your website uses cookies that track European citizens—may be at risk of penalties.
 - Ensure (cyber insurance) coverage includes regulatory fines and penalties.
- California Consumer Privacy Act of 2018
- SEC Guidance
- Insider Trading Concerns
- The Costs Defending Regulatory Matters
 - Example enforcement action: Altaba, Inc. (formerly known as Yahoo!)
 - While significant fines and penalties have proven rare (so far), investigations by regulators can be costly and a time-consuming distraction to senior management
 - Other Federal regulations, like HIPAA
 - Individual state regulations



SEC Guidance on Cyber Risk

- Date of Guidance: February 2018
 - The new guidance—while not much different than past guidance—makes it clear that the SEC will be concerned with (enforcement of) cybersecurity disclosures.
 - One highlight they noted is that while the company is investigating a potential cyber incident, they may need to implement (insider) trading restrictions.
 - CEOs must now affirmatively certify the adequacy of the company’s cybersecurity controls.
 - Some have recommended that boards create a cybersecurity committee, much like an audit committee, and have at least one board member well-versed (an expert) in cybersecurity issues.



How Does a D&O Policy Respond to Cyber as a Business Risk?

- D&O as all-risk policy
- Cyber as basis for securities class action or derivative
- SEC or other regulatory enforcement based on cyber
- Insurance considerations?
 - Intersection with cyber insurance
 - Failure to purchase cyber insurance as a D&O claim



Are Your Clients Covered?

Business leaders believe they have Cyber coverage. Most, if not all, carriers specifically exclude cyber exposure in non-cyber specific policies.

~~Miscellaneous E&O~~

- Typically excludes a security breach
- Typically tied to/requires an act of negligence in delivering professional services to trigger coverage
- Specific Exclusions

~~Property~~

- Coverage is specific to physical loss or damage to tangible property
- Courts have consistently held that data is not tangible property
- Sublimits are small for Property Damage due to a Cyber attack

~~General Liability~~

- Excludes damage to and corruption of electronic data
- Covers only "tangible" property
- Personal & Advertising Liability does not cover violations/misuse of private information
- Specific Exclusions

~~Crime~~

- Covers loss due to employee theft of money, securities or other property
- Property must be tangible and have intrinsic value
- No coverage for confidential information
- Specific Exclusions



Using Cyber Insurance for More Than Just Breach Response

- Cyber insurance can be as a risk transfer mechanism for more than just the cost of notifying affected individuals following a breach.

Traditional Risk Transfer Product Covering Third Party Claims

- Triggered by law suits, investigations, and other demands
- Policy intended to cover indemnity & defense costs
- Examples:
 - Privacy-related litigation brought by customers and/or employees
 - Regulatory fines from enforcement bodies
 - Fines, penalties & other costs resulting from payment card breaches
 - Multimedia liability



Using Cyber Insurance for More Than Just Breach Response

Response Mechanism for First-Party Events

- The company has (or may have) suffered a direct loss
- Covers expenses incurred to halt an event (breach coaches), investigate an event (forensic firms) and/or respond to an event (notifying; monitoring)
- Examples:
 - Cyber Extortion (Ransomware)
 - Business Interruption & Dependent Business Interruption
 - Crisis Management (Public Relations & Response)
 - Reputational Harm / Lost Profits
 - Social Engineering
 - System Failure



How Not to Screw Up Your Clients' Coverage

- Report immediately
- Use carrier-approved vendors
- Privilege issues



CPA-firm Specific Concerns

- Client confidentiality
- Client IP
- Social engineering / ransomware issues with client information



Questions & Contact Information



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Thank You

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